

25. In virtue of their respective offices, 1* * * * * * *Ex-officio*
 * * * * * 2[the Judges of the High Courts] are Justices of the Peace Justices of
 within and for 3[the whole of India 4* * * * *], the Peace
 Sessions Judges and District Magistrates are Justices of the Peace within and for
 the whole of the territories administered by the 5[State] Government] under
 which they are serving, and the Presidency Magistrates are Justices of the Peace
 within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

26 and 27. [*Suspension and removal of Judges and Magistrates. Suspension and removal of Justices of the Peace.*] Rep. by the A. O. 1937.

CHAPTER III.

POWERS OF COURTS.

A.—Description of offences cognizable by each Court.

28: Subject to the other provisions of this Code any offence under the Indian Offences
 XLV. Penal Code may be tried— under
 of Penal Code.
 1860.

(a) by the High Court, or

(b) by the Court of Session, or

(c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration.

As is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

29. (1) Subject to the 7[other provisions of this Code], any offence under any Offences
 other law shall, when any Court is mentioned in this behalf in such law, be tried by under other
 such Court. laws.

(2) When no Court is so mentioned, it may be tried by the High Court or 8[subject as aforesaid] by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

¹ The words "the Governor General, Governors, Lieutenant Governors, and Chief Commissioners, the Ordinary Members of the Council of the Governor General, and" rep. by the A. O. 1937.

² Substituted for "the Judges of the High Courts and the Recorder of Rangoon" by the Lower Burma Courts Act, 1900 (6 of 1900), s. 47 and Sch. I.

³ Substituted by the A. O. 1950 for "all the Provinces of India".

⁴ The words "except Part B States" were omitted by Act I of 1951, s. 5.

⁵ Substituted by the A. O. 1937 for "L. G.".

⁶ Substituted by the A. O. 1950 for "Provincial".

⁷ Substituted by Act 12 of 1923, s. 5, for "provisions of s. 447".

⁸ Inserted by Act 18 of 1923, s. 5.

29A. [Trial of European British subjects by second and third class Magistrates.] Rep. by Act 17 of 1949, s. 3 (2).

Justification
in the case of
juveniles.

29B. Any offence, other than one punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the State Government to exercise the powers conferred by section 8, sub-section (1) of the Reformatory Schools Act, 1897,^{VIII of 1897.} or, in any area in which the said Act has been, wholly or in part, repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.

30. Offences punishable with imprisonment not exceeding seven years.—Notwithstanding anything contained in section 28 or section 29, the State Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years :

Jurisdiction
in the case of
juveniles.

¹[29B.† Any offence, other than one punishable with death or ²[imprisonment] for life, committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years, may be tried by ³* * * a Chief Presidency Magistrate, or ⁴[by any Judicial Magistrate specially empowered by the State Government in consultation with the High Court] to exercise the powers conferred by section 8, sub-section (1) of the Reformatory Schools Act, 1897, or, in ^{VIII of 1897.} an area in which the said Act has been, wholly or in part, repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.]

⁵[30. Offences punishable with imprisonment not exceeding seven years.—Notwithstanding anything contained in section 28 or section 29, the State Government may, in consultation with the High Court, invest any ⁶* * * Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years :

¹ Inserted by Act 18 of 1923, s. 6.

†The provisions of section 29B shall cease to apply to any area in which Parts II to XI of the Bombay Children Act, 1948 (Bom. LXXI of 1948), have been brought into operation (vide s. 6 of Bom. 71 of 1948).

² Substituted by Act 26 of 1955 for "transportation".

³ The words "a District Magistrate or" were deleted by Bom. 23 of 1951, s. 2 and Sch. Part I.

⁴ Substituted, *ibid.*, for "by any Magistrate specially empowered by the State Government".

⁵ Substituted by Act 26 of 1955, s. 6, for the original.

⁶ The words "District Magistrate" were deleted by Bom. 39 of 1955, s. 3.

Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class.

Provided that no ^{1*} Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class.]

B.—Sentences which may be passed by Courts of various Classes.

31. (1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

Sentences which High Court and Sessions Judges may pass.

(3) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or ²[of imprisonment for life or of imprisonment for a term exceeding ten years.]

32. (1) The Courts of Magistrates may pass the following sentences namely :—

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|--|---|---------------------------------------|
| (a) Courts of Presidency Magistrates and of Magistrates of the first class : | { Imprisonment for a term not exceeding two years including such solitary confinement as is authorized by law;
Fine not exceeding ³ [two thousand] rupees;
Whipping. | Sentences which Magistrates may pass. |
| (b) Courts of Magistrates of the second class : | { Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law;
Fine not exceeding ⁴ [five hundred] rupees;
* * * * * | |
| (c) Courts of Magistrates of the third class : | { Imprisonment for a term not exceeding one month;
Fine not exceeding ⁶ [one hundred] rupees. | |

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

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33. (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default :

Power of Magistrates to sentence to imprisonment in default of fine.

¹ The words "District Magistrate" were deleted by Bom. 39 of 1955, s. 3.

² Substituted by Act 26 of 1955, s. 7, for the original portion.

³ Substituted, *ibid*, s. 8 (i), for "one thousand".

⁴ Substituted, *ibid*, s. 8 (ii), for "two hundred".

⁵ The words "Whipping (if specially empowered)" repealed by the Whipping Act, 1909 (4 of 1909), s. 8 and Schedule.

⁶ Substituted by Act 26 of 1955, s. 8 (iii), for "fifty".

⁷ Sub-section (3) repealed by the Whipping Act, 1909 (4 of 1909), s. 8 and Schedule.

Proviso as to
certain cases.

Provided that—

(a) the term is not in excess of the Magistrate's powers under this Code ;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher
powers
of certain
District
Magistrates.

34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of [imprisonment for life] or imprisonment for a term exceeding seven years.

34A. [*Sentences which Courts and Magistrates may pass upon European British subjects.*] Rep. by Act 17 of 1949, s. 3 (2).

Sentence in
cases of con-
viction of
several
offences at
one trial.

35. (1) ²[When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code,] sen-
tence him, for such offences, to the several punishments prescribed therefor
which such Court is competent to inflict ; such punishments, when consisting of
imprisonment * * to commence the one after the expiration of the other in such
order as the Court may direct, unless the Court directs that such punishments shall
run concurrently. XLV of 1860..

(2) In the case of consecutive sentences it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided as follows :—

Maximum
term of
punishment.

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years ;

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

¹ Substituted by Act 26 of 1955, s. 9, for "transportation for a term exceeding seven years".

² Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 7, for "When a person is convicted at one trial of two or more distinct offences, the Court may".

(3) For the purpose of appeal, [the aggregate of consecutive] sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

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C.—Ordinary and Additional Powers.

36. All District Magistrates, ^{Ordinary powers of} Sub-divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers".

37. In addition to his ordinary ^{Additional powers} powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class ^{conferable on Magistrates.} may be invested by the State Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the State Government or the District Magistrate.

36. All ³Judicial and ^{Ordinary} Executive Magistrates other than ^{powers of} Special Judicial and Executive Magistrates], have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

*[37. (1) In addition to his ^{Additional powers con-} ordinary powers,—
invest any Magistrate with any of the powers as specified in the fourth Schedule, and

(b) a Sessions Judge may invest any Judicial Magistrate within his local jurisdiction with the powers specified in sub-part (B) of Part I of the fourth Schedule.

(2) (i) The power under clause (a) of sub-section (1) shall be exercised by the State Government in the case of Judicial Magistrates in consultation with the High Court.

(ii) The power under clause (b) of sub-section (1) shall be exercised by the Sessions Judge with the approval of the High Court.

(3) The State Government may authorise a District Magistrate to invest any Magistrate subordinate to him with any of the powers specified in Part II of the fourth Schedule.]

¹ Substituted by Act 18 of 1923, s. 7, for "aggregate".

² The Explanation and Illustration to s. 35 rep. by s. 7, *ibid*.

³ Substituted by Bom. 23 of 1951, s. 2 and Sch. Pt. I, for "District Magistrates, Sub-Divisional Magistrates and Magistrates of the first, second and third classes".

⁴ Substituted by Bom. 34 of 1953, s. 4, for the existing s. 37.

Control of District Magistrate's investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the State Government.

Control of District Magistrate's investing power.

38. The power ¹[delegated to] the District Magistrate by section 37 shall be exercised subject to the control of the ²[³[State] Government].

Powers on Judicial Magistrates to be conferred in consultation with the High Court.

⁴[38A. Whenever under any provisions of this Code or of any law for the time being in force relating to any of the matters specified in Lists II and III of the Seventh Schedule to the Constitution any judicial powers are to be conferred on a Sessions Judge, an Additional or Assistant Sessions Judge or a Judicial Magistrate or any such Magistrate is to be specially empowered to exercise such powers, the orders conferring such powers or empowering the exercise of such powers shall be made by the State Government in consultation with the High Court notwithstanding that such provision may not expressly provide for such consultation.

Explanation.—For the purposes of this section, the question whether any powers are judicial shall be decided by the State Government in consultation with the High Court and such decision shall be final.]

D.—Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers.

39. (1) In conferring powers under this Code the ²[³[State] Government] may, by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

¹ Substituted by Bom. 23 of 1951, s. 2 and Schedule Part I, for "conferred on".

² Substituted by the A. O. 1937 for "L.G.".

³ Substituted by the A. O. 1950 for "Provincial".

⁴ Inserted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is ¹[appointed] to an equal or higher office of the same nature, within a like local area under the same ²[³[State] Government], he shall, unless the ²[³[State] Government] otherwise directs, or has otherwise directed, ⁴* exercise the same powers in the local area ⁵[in which] he is so ¹[appointed].

41. (1) The State Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

41. (1) The ²[³[State] Government] may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it:

⁶[Provided that in the case of Judicial Magistrates the withdrawal of such powers shall be made in consultation with the High Court.]

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

⁷[(3) Any powers conferred by the Sessions Judge may be withdrawn by the Sessions Judge with the approval of the High Court.]

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or police officer reasonably demanding his aid, whether within or without the presidency-towns,—

(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

44. (1) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following sections of the Indian Penal Code (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460 shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

¹ Substituted by Act 18 of 1923, s. 8, for "transferred".

² Substituted by the A. O. 1937 for "L. G.".

³ Substituted by the A. O. 1950 for "Provincial".

⁴ The words "continue to" rep. by Act 18 of 1923, s. 8.

⁵ Substituted by s. 8, *ibid*, for "to which".

⁶ Added by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

⁷ Inserted by Bom. 71 of 1954, s. 3.